mean that if the borrower understood the contents of the note but not the language in which it was written it did not have to be attested. Here the learned Magistrate found that the appellant (borrower) understood the contents of the note, but did not speak English.

Mr. Lang, for the respondent, submitted that all that was necessary was that the appellant (borrower) should understand the contents of the note.

Now the wording of this section provides that the terms of the promissory note are to be explained to the borrower if he does not understand the written language on such promissory note and that to me means simply what it says. If the borrower does not understand what is written on the promissory note, then an attestor shall explain the terms of the note; it does not mean that, if the borrower does not understand the language in which the note is written, i.e. either English or Malay (vide section 16), there must be an attestor, if he understands the terms and contents of the note. I think, therefore, on that point in his grounds of judgment the learned Magistrate was correct in his interpretation of section 27.

Now, as to the second point that the provisions of section 16 of the Ordinance had not been complied with, as all the terms of the contract were not written on the promissory note before it was executed and the money paid over, neither were they on any copy, if one was handed to the appellant, having considered the evidence on the record and the arguments of Counsel on this point, together with the learned Magistrate's finding that he could not accept appellant's story, I have come to the conclusion that the promissory note as filled in by the appellant before execution was sufficient to satisfy the provisions of section 16 of the Ordinance. I accept the findings of the learned Magistrate which amounts to a finding that a copy of the promissory note as executed was handed to the appellant in compliance with section 16 of the Ordinance.

For the above reasons the appeal will be dismissed with costs.

Appeal dismissed.

REG. v. NG LEAN TEIK

[A.Cr.J. (Spenser Wilkinson J.) October 14, 1955]

[Penang — Criminal Appeal No. 30 of 1955]

Firearms and Ammunition (Unlawful Possession) Ordinance, 1946 — Rules under Arms and Explosives Ordinance, r. 6 — Unlawful possession of ammunition — Whether members of Home Guard are exempted from provisions of the Ordinance — Construction of r. 6.

Interpretation of Statutes — Rule of Construction.

In this case the respondent was charged with unlawful possession of seven rounds of 12 bore shot gun ammunition an offence under r. 6 of the Rules made under the Arms and Explosives Ordinance and punishable under s. 3 of the Firearms and Ammunition (Unlawful Possession) Ordinance 1946. The respondent was a member of the Home Guard and the facts showed that the seven rounds were found in his house. The seven rounds had originally been issued to the respondent on the range for firing practice. The learned President of the Sessions Court acquitted the respondent as he held that the list of persons to whom the provisions of the Arms and Explosives Ordinance did not apply as set out in s. 3 of the Ordinance must be extended to include a member of the Home Guard. The Crown appealed against the acquittal.

Held: (1) the learned President was right in holding that the Arms and Explosives Ordinance did not apply to the respondent as he was a member of the Home Guard and the ammunition was in the possession of the respondent in the course of his duty; (2) as the respondent had the ammunition in his possession for his private use and not for trade purposes, he had committed no offence under r. 6 of the Rules under the Arms and Explosives Ordinance and he was therefore rightly acquitted.

Cases referred to:—

(1) *Lane v. Cotton* 88 E.R. 1458.

(2) *Magor & St. Mellons Rural District Council v. Newport Corporation* (1951) 2 T.L.R. 935.

MAGISTRATE'S CRIMINAL APPEAL.

D. C. Jackson (Sr. Federal Counsel) for the appellant.

Respondent in person.

Spenser Wilkinson J. : — This was an appeal by the Crown against the decision of the President of the Sessions Court acquitting the respondent upon a charge of unlawful possession of seven rounds of 12 bore shot gun ammunition. The charge was laid down under Rule 6 of the Rules made under the Arms and Explosives Ordinance and as punishable under section 3 of the Firearms and Ammunition (Unlawful Possession) Ordinance, 1946.

Under the Rules above referred to (Rule 11) the penalty upon contravention of Rule 6 is a fine not exceeding $500 and forfeiture of the explosives stored or possessed, but by reason of the provisions of the Firearms and Ammunition (Unlawful Possession) Ordinance, 1946 any unlawful possession (which means possession contrary to any written law on the subject) of firearms or ammunition is punishable with ten years' imprisonment or a fine of $10,000 or both.

The facts of the case as found by the learned President are that the respondent was a member of an operational section of the Home Guard and in so far

as he was such a member he was a volunteer; that he had in his possession in his house a pump gun, twenty rounds of ammunition in metal casing and seven rounds of ammunition in red cardboard casing and that all of these rounds were suitable for firing from his gun; that the respondent's possession of the gun was without a licence issued under section 7 of the Arms and Explosives Ordinance and that his possession of the ammunition was without a licence such as is referred to in Rule 6 of the Rules under which he was charged; that the gun and the twenty rounds in metal casing were issued to the respondent for general use by him in the course of his duties; that the other seven rounds were issued to the respondent on the range for firing practice; that his possession of these seven rounds may originally have been in order, but that his retention of them was without the approval of his Commanding Officer; and that he kept these seven rounds in his private premises either for his private use or for use on duty with the gun which he was authorised to possess, but not for trade purposes.

Before I deal with the law, I feel I ought to point out that the careful judgment of the learned President and the lengthy argument which was necessary before me on the appeal demonstrate clearly the very unsatisfactory state of the law regarding the possession of ammunition. The law regarding the possession or carrying of firearms is clear enough; but there is no provision in any Ordinance or Enactment, as far as I am aware, dealing with the possession of ammunition as such. The Emergency Regulations deal specifically with the possession of ammunition and make such possession in certain circumstances punishable with death; but apart from the Emergency Regulations the whole quesion of the possession of ammunition has been left to be dealt with by departmental rules, which deal with the import, handling and storage of explosives and touch upon possession only incidentally and deal with ammunition only in as far as this is included in the general definition of explosives. When it is borne in mind that the Firearms and Ammunition (Unlawful Possession) Ordinance, 1946 makes the unlawful possession of ammunition punishable with ten years' imprisonment it would appear that a clarification of the law relating to the possession of ammunition for use with guns, rifles and pistols is highly desirable.

The learned President came to the conclusion that upon the true construction of section 3 of the Arms and Explosives Ordinance the list of persons to whom the provisions of the Ordinance do not apply must be extended to include a member of the Home Guard.

The relevant part of section 3 of the Ordinance (which was amended in 1941) says :—

> "Nothing in this Ordinance shall apply to:— (c) any of the following persons or their equipment while in the course of their duty or employment . . ."

and then proceeds to set out a list of six categories of persons which can be summarized as members of His Majesty's Armed Forces, members of the Volunteer Forces, additional Forces created under section 16 of the Compulsory Service (Local Forces) Ordinance, 1940, members of the Police Force, members of the Volunteer Police Reserve and Dog Shooters.

In coming to his conclusion on the construction of this section the learned President relied upon the law as stated in *Maxwell* on Interpretation of Statutes, 9th edition at page 80 :—

> "Sometimes the governing principle of the remedial enactment has been extended to cases not included in its language to prevent a failure of justice and consequently of the probable intention"

and at page 82 :—

> "Except in some cases where the principle of excessively strict construction has been applied the language of a statute is generally extended to new things which were not known and could not have been contemplated by the Legislature when it was passed. This occurs when the Act deals with a genus, and the thing which afterwards comes into existence is a species of it."

Many of the authorities cited in the textbook in support of these propositions are not available in Penang, but I think they are supported by the case of *Lane v. Cotton*[1].

As I pointed out in the course of the argument it may be that the Compulsory Service (Local Forces) Ordinance, 1940 (in so far as it authorises the raising of Local Forces) is spent, because that Ordinance was expressly made for the purposes of the then emergency, which emergency, I believe, came to an end in the early part of 1946. The learned Deputy Public Prosecutor thought this might strengthen his argument that none of the categories contained in the sub-paragraph includes the Home Guard. I do not think it makes much difference, however, whether the Ordinance is spent or not. The question is what the intention of the whole provision as disclosed by the words used was when it was made and that intention remains the same whether or not it is now possible to raise further Local Forces under the 1940 Ordinance. I think, however, that if that Ordinance is spent this lends support to the suggestion that the reference should be to such written law as now enables Local Forces to be raised, such as the Emergency Regulations.

As far as this part of the construction of the section goes I am inclined to agree with the learned President because the genus dealt with by the section can be described as armed forces or armed bodies of men, and the Home Guard is a species of armed force or armed body of men, which had no existence in 1941 when the section in question was

amended. This view is strengthened by Regulation 6(2) of the Emergency (Home Guard) Regulations which provides that a Home Guard is deemed to be a member of a Local Force within the meaning of any written law.

Having decided that the members of the Forces described in section 3(1)(c) of the Ordinance must include a member of the Home Guard the learned President went on to find that the respondent had these extra rounds of ammunition in his possession in the course of his duty or employment as a member of one of the Forces exempted from the provisions of the Ordinance. It was argued on behalf of the Crown that whilst the twenty rounds of metal casing cartridges which were issued to the respondent were in his possession in the course of his duty or employment yet at the time of the offence the other seven rounds were not possessed by him in the course of his duty or employment because they had not been issued to him and he had no reason for the purposes of his duty to have them in his possession.

I am inclined to think that the words "while in the course of their duty or employment" must refer back to the persons and not to the equipment. I think, moreover, that the word "while" in this context must have a temporal significance (although the word "whilst" would have made this clearer), and if this is so, the Crown appears to me to be placed in a quandary in regard to the present case, because if at the time when the offence is alleged to have been committed the respondent was in the course of his duty so as to entitle him to possess twenty rounds of ammunition with impunity how can it be said that at the same moment he was not in the course of his duty so as to make his possession of the other seven rounds unlawful? The Deputy Public Prosecutor had to concede that the true view might be that the possession of all twenty-seven rounds was in fact unlawful, but I think such a construction should be avoided if a more reasonable one is permissible.

I have come to the conclusion that the learned President was right in holding that the respondent had these seven rounds in his possession in the course of his duty. I think the onus was on the prosecution to prove the offence, and that section 3 of the Arms and Explosives Ordinance cannot be said to be an "exception" within the meaning of section 105 of the Evidence Ordinance. If the respondent is one of the kind of persons mentioned in section 3(1)(c) then the Ordinance does not apply to him at all, and it is for the prosecution, who are alleging an offence, to satisfy the Court that he does come within the Ordinance. Even if I am wrong as to this question of burden of proof then I must take into consideration :-

(a) the almost complete lack of evidence as to what exactly the duties of a Home Guard when he is in his house are; and

(b) the fact that it was clearly considered part of his duty to possess a gun and twenty rounds of ammunition even when in his house.

Regulation 9 of the Emergency (Home Guard) Regulations 1951 tells one what the powers of a Home Guard are but the Regulations do not set out his duties, and I think some evidence could and should have been led as to what is expected of these men whilst in their homes in what might be called their "off" periods. No doubt they are in one sense off duty; but if they are expected at any moment in case of need to take up their arms and use them then it seems clear that they must have ammunition with them as otherwise their firearms would be worse than useless. I think that on the evidence it was more probable than not that the respondent was in the course of his duty or employment within the meaning of the section at the material time. I agree, therefore, that the Arms and Explosives Ordinance (and therefore the Rules made thereunder) did not apply to him.

I find that I reach the same decision in this case on a different ground, with which the learned President did not deal in his grounds of decision. The basis of any liability to punishment in this case is Rule 6 of the Rules under the Arms and Explosives Ordinance. That Rule reads as follows :—

"6. No person shall unless authorised thereto by licence made in accordance with the restrictions and conditions of such licence and such conditions as may be prescribed store or have in his possession or under his control an explosive, in any place or premises, whether on land or on water, not so duly licensed.

Provided always that:—

Provided always that it shall be lawful for any person to store without a licence in private premises for his private use and not for trade purposes any amount not exceeding —

(a) (i) five hundred safety cartridges for use with any gun, rifle or pistol for which he holds a licence under section 7 of the Ordinance, or (ii) one pound of gunpowder and two hundred percussion caps, which together shall be considered the equivalent of two hundred safety cartridges, or (iii) any amount of safety cartridges, plus gunpowder and percussion caps calculated as in (ii) above as shall in the aggregate, not exceed the equivalent of five hundred safety cartridges; and

(b) Five pounds of fireworks of class 7.

Provided also that the provisions of this rule shall not apply to the case of any person conveying explosives from place to place in accordance with the provisions of the Ordinance."

The proviso was amended in 1934 and the only copy available to me of these Rules as amended is contained in the small volume entitled "The Subsidiary Legislation of the Straits Settlements enacted under the Arms and Explosives Ordinance". Whether or not the repetition of the words "Provided always that" in

this amendment is the result of careless drafting of the amendment or of inaccurate printing I do not know. The publication in question does not appear to be published by authority, and I think it may be assumed that this repetition is the result of careless printing and that the first "Provided always that: —" should not be there.

Even apart from this the Rule as amended is somewhat obscure. The dash after the word "exceeding' and the division into sub-paragraphs (a) (i), (ii) and (iii) and so on serve to emphasize that the three parts of paragraph (a) are separate alternatives and I think they must be read entirely disjunctively. If this be so, the third alternative must be read as follows :—

"Provided always that it shall be lawful for any person to store without a licence in private premises for his private use and not for trade purposes any amount not exceeding any amount of safety cartridges, plus gunpowder and percussion caps calculated as in (ii) above as shall in the aggregate, not exceed the equivalent of five hundred safety cartridges."

The resulting expression "any amount not exceeding any amount of safety cartridges" is somewhat peculiar, but I think it is plain that this part of the proviso if read by itself specifically allows the possession of safety cartridges not exceeding the "equivalent of" five hundred safety cartridges, and if this be so, it appears to me to be quite plain that the respondent committed no offence by possessing twenty-seven cartridges, which on the evidence I am satisfied must be looked upon as having been either safety cartridges or their equivalent.

The learned Deputy Public Prosecutor argued, however, that the whole of this part of the proviso should be read together; that it must all be read subject to the words "for use with any gun, rifle or pistol for which he holds a licence under Regulation 7 of the Ordinance"; that this is clearly the intention of the Rule; and that the position of the words in sub-paragraph (i) is merely a mistake in drafting.

If one starts with the preconceived idea that it was the intention of the draftsman of this proviso that sub-paragraphs (ii) and (iii) should apply only in cases where a licence under section 7 of the Ordinance exists there would appear at first sight to be some force in the contention that by implication from the repetition of the words "safety cartridges" in all three sub-paragraphs the wording of the Rule should be so construed. But this method of approach would, I think, offend against the principles laid down in the House of Lords in the case of *Magor & St. Mellons Rural District Council v. Newport Corporation*[2] to which I shall refer again hereafter. Moreover, there are difficulties in the way of this construction.

It must be observed that under Rule 6 it is the premises in which the explosives are stored that have to be licensed. A man's house is just as much unlicensed in respect of rounds of ammunition issued to him by the Home Guard Authorities as in regard to rounds of ammunition acquired in any other manner. In order to comply with the Rule interpreted in the manner suggested a Home Guard, before he can lawfully take any ammunition home, must have two licences — one for his gun and another for his house. Unless, therefore, sub-paragraph (iii) of the proviso applies to a person who has no licence for firearms then in the absence of these licenses not only is the possession by a Home Guard in his house of twenty rounds of ammunition issued to him illegal but also the Home Guard Authorities commit an offence by aiding and abetting whenever they issue ammunition to a Home Guard to be kept in his house. It is, I think, clear that the prosecution did not read the Rule in this way when conducting the case in the Court below and that the Home Guard Authorities have not so construed it.

The whole proviso is the more obscure in that there is no definition of the term "safety cartridges" nor any indication of what is meant by the word "equivalent". It might be argued. for example, that the cartridges possessed by the respondent in the present case were "equivalent" to safety cartridges for use with a licensed gun.

I thought at first that by virtue of the words "for his private use" even possession under sub-paragraph (iii) might have to be connected with the possession of some form of authorised firearm, because otherwise the possessor might find difficulty in explaining for what private use he was storing the explosives, but after a careful reading of the whole proviso it seems to me that a person who in fact had a quantity of gunpowder in his possession under sub-paragraph (ii) or (iii) might justifiably assert that he had it in his possession for the purpose of making fireworks which he is entitled to possess under paragraph (b) of the proviso.

As I have said it may well be that the intention in the mind of the draftsman of this proviso was to relate the possession of explosives with the possession of a firearm licensed under section 7 of the Ordinance, but I do not think the words used carry out this intention and I think I must avoid the error of trying to ascertain what may have been the intention and then inserting the necessary words to carry out that intention. In the *Magor & St. Mellon's*[2] *case* Lord Simonds after referring to a suggestion made in the Court of Appeal that the Court having discovered the

intention of Parliament must proceed to fill the gap said :—

"The part which is played in the judicial interpretation of a statute by reference to the circumstances of its passing is too well known to need restatement: it is sufficient to say that the general proposition that it is the duty of the Court to find out the intention of Parliament — and not only of Parliament but of Ministers also — cannot by any means be supported . . . . . The second part of the passage that I have cited from the judgment of the learned Lord Justice is no doubt the logical sequel of the first. The Court, having discovered the intention of Parliament, and of Ministers too, must proceed to fill in the gaps. What the Legislature has not written, the Court must write. This proposition, which restates in a new form the views expressed by the Lord Justice in the earlier case of Seaford Court Estates Ltd. v. Asher (65 The Times L.R., 379; (1949) 2 K.B. 481) (to which the Lord Justice himself refers) cannot be supported. It appears to me to be a naked usurpation of the legislative function under the thin disguise of interpretation. And it is the less justifiable when it is guesswork with what material the Legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act."

As stated in *Maxwell* on Interpretation of Statutes, 9th edition, page 3 :—

"The first and most elementary rule of construction is that it is to be assumed that the words and phrases of technical legislation are used in their technical meaning if they have acquired one, and, otherwise, in their ordinary meaning; and, secondly, that the phrases and sentences are to be construed according to the rules of grammar."

In construing the Rule in question, therefore, I am not concerned with any intention other than what is disclosed by the actual words used, and reading the Rule according to the rules of grammar it appears to me (whatever the intention of the draftsman may have been) that the third sub-paragraph of this proviso must be read disjunctively in the manner in which I have set it out earlier in this judgment. I can find no reason to restrict the meaning of that sub-paragraph by importing into it a reference to words which appear to me to have been deliberately confined to sub-paragraph (i).

On the learned President's finding of fact, therefore, that the respondent had these rounds in his possession for his private use and not for trade purposes (a finding which has not been seriously disputed) the respondent in my opinion committed no offence under Rule 6 and was, therefore, rightly acquitted.

For all the above reasons the appeal is dismissed.

Appeal dismissed.

LEOW NGHEE LIM v. REG.

[A.Cr.J. (Taylor J.) December 9, 1955]

[Singapore — Magistrate's Appeal No. 175 of 1955]

Dangerous Drugs Ordinance, 1951, ss. 9 & 37 — Possession of prepared opium — Presumption arising from custody or control — Presumption may be rebutted by circumstances appearing in the prosecution evidence.

This was an appeal from the conviction of the appellant on a charge of possession of prepared opium. The facts were that the Police, apparently acting on information received, raided a coffee shop and in a drawer of the counter found a cigarette tin containing nine small packets of prepared opium. They arrested the shopkeeper, the appellant. The Police did not find any pipe or other utensil. The drawer was not locked; it contained about 15 small books, in which sales to credit customers were entered and other articles indicating that the appellant and his assistants all had access to the drawer. The learned Magistrate convicted the appellant of possession of the opium.

Held: (1) on the facts the learned Magistrate was wrong in holding that the assistants did not have access to the drawer; (2) the facts showed that the appellant and his assistants had joint control of the drawer in which the tin of opium was found; (3) the circumstances of the case including the fact that the quantity of opium was small, show possession by one person and are equally consistent with the possession being that of one of the assistants; (4) therefore the presumption under s. 37 of the Dangerous Drugs Ordinance, 1951, did not operate in this case, so as to make the appellant guilty of possession of prepared opium.

Meaning of "possession" expounded and discussed.

Semble: (1) the characteristics of "possession" stated in **R. v. Mak Thim**(1) do not apply, without qualification, to the Dangerous Drugs Ordinance; (2) the presumptions against a person accused under the Dangerous Drugs Ordinance, do not necessarily require rebuttal by defence evidence. They may be rebutted by circumstances appearing in the prosecution evidence; (3) the inferences to be drawn from control and custody depend, in part, on whether the quantity is suggestive of trafficking or of individual consumption; (4) a bare carrier does not have possession but if he has knowledge that the goods carried include opium he may be convicted of abetment of possession.

Cases referred to :—

(1) *R. v. Mak Thim* (1949) M.L.J. 54.

(2) *R. v. Sleep* (1861) 8 Cox, C.C. 472; Le. & Ca. 44.

MAGISTRATE'S APPEAL.

M. B. Brash for the appellant.

J. F. McWilliam (Crown Counsel) for the respondent.

Taylor J. : — This is a Chandu Appeal. Police, apparently acting on information received, raided a coffee shop and in a drawer of the counter found a cigarette tin containing nine small packets of prepared opium; they arrested the shopkeeper. They did not find any pipe or other gear. The drawer was not locked; it contained about 15 small books, in which sales to credit customers were entered, and other articles indicating that the shopkeeper and his assistants all had access to the drawer and in fact used it. The shopkeeper was convicted of possession of the opium. He now appeals.

The defence at the trial was that the facts did not show that the accused had possession of the opium because he used the drawer jointly with others. The learned Magistrate in a very long and careful judgment rejected this defence for two main reasons. The first